

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

EDWARD NELLSON,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. CIV-20-562-F
)	
GARY PETRY, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff Edward Nellson, a federal prisoner appearing *in forma pauperis* and represented by counsel, brings this action under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), alleging violations of his constitutional rights by defendants Gary Petry and Theresa Stenmark.

On March 2, 2022, United States Magistrate Judge Amanda Maxfield Green issued a Report and Recommendation recommending: (1) overruling the objection of plaintiff (doc. no. 85) to the substitution of United States of America for defendant Gary Petry on Count III and Count IV of the Amended Complaint and allowing United States of America to be substituted as the proper defendant on Count III and Count IV; (2) granting the United States' Motion to Dismiss (doc. no. 83) and dismissing Counts III and IV against United States of America for lack of subject matter jurisdiction; (3) granting in part defendants' Motion to Dismiss (doc. no. 84) and dismissing without prejudice Count I against defendant Theresa Stenmark; quashing service upon defendant Gary Petry for insufficient service of process and ordering plaintiff to effectuate proper service on defendant Petry within an appropriate time or risk dismissal. Magistrate Judge Green advised plaintiff of his

right to file an objection to the Report and Recommendation on or before March 16, 2022, and further advised plaintiff that failure to file a timely objection to the Report and Recommendation waives the right to appellate review of both factual and legal issues therein contained.

To date, plaintiff has neither filed an objection to the Report and Recommendation nor sought an extension of time to file an objection. With no objection being filed within the allotted time, the court accepts, adopts, and affirms the Report and Recommendation.


Accordingly, the Report and Recommendation (doc. no. 96) issued by United States Magistrate Judge Amanda Maxfield Green on March 2, 2022 is **ACCEPTED**, **ADOPTED**, and **AFFIRMED**. The court **ORDERS** as follows:

- (1) Plaintiff's Objection to the U.S. Government's Substitution of Parties (doc. no. 85) is **OVERRULED** and the United States of America is allowed to be substituted as the proper defendant on Count III and Count IV of the Amended Complaint pursuant to its Notice of Substitution of Parties (doc. no. 82).
- (2) The United States' Motion to Dismiss (doc. no. 83) is **GRANTED**. Count III and Count IV of the Amended Complaint are **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction. The court clerk is directed to terminate the United States of America as a defendant in her records.
- (3) The Individual Defendants' Motion to Dismiss (doc. no. 84) is **GRANTED** in part. Count I of the Amended Complaint is **DISMISSED WITHOUT PREJUDICE** against defendant Theresa Stenmark based upon absolute immunity. The court clerk is **DIRECTED** to terminate defendant Theresa Stenmark as a defendant in her records. The improper service of process on defendant Gary Petry is **QUASHED**. Plaintiff is

DIRECTED to effectuate proper service of process on defendant Gary Petry in accordance with Rule 4, Fed. R. Civ. P., and file proof of service **on or before May 2, 2022**. Failure to comply may result in the dismissal without prejudice of plaintiff's action against defendant Gary Petry.

- (4) To the extent the Individual Defendants' Motion to Dismiss (doc. no. 84) is not granted, it is **DENIED** as **MOOT**.

IT IS SO ORDERED this 21st day of March, 2022.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

20-0562p002.docx